

IN THE MATTER OF:

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COMPLAINT NO. R5-2019-0511

FOR

ADMINISTRATIVE CIVIL LIABILITY

JULY 5, 2019

BACKGROUND

Sanitary Sewer Collection System

1. The Discharger owns and operates the sanitary sewer collection system, which consists of approximately 165,000 lineal feet of sewer lines. Since the sanitary sewer collection system is greater than one mile in length, the Discharger is required to enroll in State Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems which requires the City to operate and maintain its collection system to prevent sanitary sewer overflows and spills. Prohibition C.1 of Order No. 2006-0003-DWQ states that the discharge of untreated or partially treated wastewater from the collection system to waters of the United States is prohibited.
2. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. Order No. 2006-0003-DWQ is not an NPDES permit
3. Since 27 October 2014, the City has discharged untreated domestic and municipal wastewater from its collection system to surface waters 15 times.

Wastewater Treatment Plant

4. The Discharger owns and operates the Mt. Shasta Wastewater Treatment Plant. Treated wastewater is discharged from Discharge Point D-001 to the Sacramento River, a water of the United States. The Discharger is subject to effluent limitations measured at monitoring location EFF-001 contained in their NPDES permit when discharging at Discharge Point D-001.
5. On 4 October 2012, the Central Valley Water Board issued NPDES permit Order R5-2012-0086, which became effective 23 November 2012.
6. On 4 October 2012, the Central Valley Water Board also adopted Time Schedule Order (TSO) R5-2012-0087. The TSO became effective on 4 October 2012 and provided a compliance time schedule table with interim effluent limitations for ammonia, copper, and zinc until 1 June 2017.
7. On 7 April 2017, the Central Valley Water Board amended TSO R5-2012-0087 and adopted TSO R5-2012-0087-01 on 7 April 2017. TSO R5-2012-0087-01 became effective on 7 April 2017 and extended the compliance time schedule table and interim effluent limitations contained in TSO R5-2012-0087 for copper and zinc until 4 October 2017 and extended the compliance time schedule table and recalculated interim effluent limitations for ammonia until 27 May 2020.
8. On 8 December 2017, the Central Valley Water Board adopted NPDES permit Order R5-2017-0117, which became effective 31 January 2017.
9. As described in Attachment B, since 28 February 2017, the City has violated effluent limitations contained in Order R5-2017-0117 for biological oxygen demand, copper, zinc, and total suspended solids.

ALLEGATIONS

10. The Discharger violated Prohibition C.1 of Order No. 2006-0003-DWQ, Section 301 of the Clean Water Act, and Water Code section 13376 by discharging a total of 2,788,310 gallons of untreated sewage to tributaries to the Sacramento River, a water of the State of California and a water of the United States, during the period of 27 October 2014 to 1 January 2018.
11. The details of these violations are set forth in full in the accompanying Attachment A, which is incorporated herein by this reference as if set forth in full.
12. Pursuant to Water Code section 13385(a), any person who violates Water Code section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c),

in an amount not to exceed the sum of both the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

13. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
14. On 20 May 2010, the State Water Board's Water Quality Enforcement Policy (2010 Enforcement Policy) became effective. The 2010 Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability. The 2010 Enforcement Policy applies to all violations between 20 May 2010 and 4 October 2017.
15. State Water Board Resolution No. 2017-0020 adopted an amended version of the Enforcement Policy referred to as the 2017 Enforcement Policy. The 2017 Enforcement Policy became effective on 5 October 2017 and applies to all violations occurring on or after that date.
16. The administrative civil liability for violations of Order No. 2006-0003-DWQ was derived from the use of the penalty methodology in the 2010 and 2017 Enforcement Policies, as explained in detail in Attachment A.

MANDATORY MINIMUM PENALTIES

17. Pursuant to Water Code section 13385(h)(1) a mandatory minimum penalty of \$3,000 shall be assessed for each serious violation. A serious violation is any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirement by 40% for Group I pollutants and 20% for Group II pollutants. Order No. 2006-0003-DWQ specifies effluent limits that apply to the City.
18. Pursuant to Water Code section 13385(i)(1) a mandatory minimum penalty of \$3,000 shall be assessed for each non-serious violation. A non-serious violation

is whenever the discharger exceeds a waste discharge requirement effluent limitation four or more times in a six month period, except that the first three violations are not counted.

19. The alleged violations of effluent limitations contained in NPDES permit Order R5-2017-0117 are subject to mandatory minimum penalties pursuant to Water Code section 13385(h)(1) and 13385 (j)(1) are set forth in Attachment B.

PROPOSED CIVIL LIABILITY

20. It is recommended that pursuant to Water Code section 13385(e), the Central Valley Water Board should impose a civil liability of two million three hundred sixty seven thousand one hundred and eighty four dollars (\$2,367,184) for the discharge of untreated sewage from 27 October 2014 to 1 January 2018.
21. It is recommended that pursuant to Water Code sections 13385(h)(1) and 13385 (i)(1), the Central Valley Water Board should impose civil liability of eighty four thousand dollars (\$84,000) in mandatory minimum penalties for serious and non-serious effluent violations from 28 February 2017 to 30 April 2019.

THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:

22. This Administrative Civil Liability (ACL) Complaint is issued under authority of Water Code section 13323.
23. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of two million four hundred and fifty one thousand one hundred and eighty four dollars (\$2,451,184).
24. You have the right to a hearing on this matter within 90 days of the issuance of this ACL Complaint. A hearing will be scheduled on this matter if you do not submit the attached waiver form to the Prosecution Team by 12 July 2019.
25. If the Central Valley Water Board holds a hearing, it may choose to impose an administrative civil liability in the amount proposed or for a different amount, decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider enforcement. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing.

July 5, 2019

26. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to “actions” and “special proceedings” and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

Dated this 5 Day of July 2019

(original signed by Angela Wilson, for)

Clint E. Snyder, P.G.
Assistant Executive Officer

Signed pursuant to the authority
delegated by the Executive Officer to
the Assistant Executive Officer